

TITLE 326 AIR POLLUTION CONTROL DIVISION

LSA Document #11-747

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from February 6, 2013, through March 8, 2013, on IDEM's draft rule language. IDEM received comments from the following parties:

Indiana Cast Metals Association (INCMA)
Bingham Greenebaum Doll on behalf of CASE Coalition (BGD)
Indiana Energy Association on behalf of the Indiana Utility Group (IEA)
American Electric Power Service Corporation (AEP)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: The commenter is uncertain what has precipitated new action on this rule given the long period of time since the United States Environmental Protection Agency's (U.S. EPA's) 1999 feedback on this matter and is not aware of any new threat or mandate to propose new revisions at this time. This opposition is further supported by Governor Pence's moratorium on new rules recently put into effect by Executive Order 13-03 to promote job creation, economic development, and freedom which should encompass this rule. The draft rule language significantly limits the ability of business owners to more simply and efficiently amend their permits as needed by ratcheting down the standards to more strictly define minor changes. We believe the current standards have proven to be adequate and allowed reasonable changes when needed without an overly bureaucratic review and without harm to the environment. The burdensome and ever changing regulatory environment is a major concern for economic development and job growth among most manufacturers. (INCMA)

Comment: It is not clear that this rule needs to be amended. U.S. EPA has not issued a letter of deficiency to IDEM regarding this issue. IDEM should consider the full costs to Indiana's economy imposed by these changes, including the costs related to the competitive disadvantage Indiana businesses will face from longer permit review time periods for certain Title V source modifications. (BGD)

Response: The rulemaking was initiated prior to the new rule moratorium and as soon as IDEM had a clear understanding of the changes that U.S. EPA required in order for IDEM to get state implementation plan (SIP) approval of the construction modification provisions for existing Title V and FESOP sources. While the changes made in these rules affect minor new source review construction modifications, the changes are necessary to obtain SIP approval for 326 IAC 2-7-10.5 and 326 IAC 2-8-11.1 as a whole. SIP approval of these construction modification rules will address concerns about IDEM's authority to create applicable requirements through Title I modifications.

Comment: The primary concern relates to the proposed changes to 326 IAC 2-7-10.5(e) and 2-8-11.1(d) that remove the less than 100 ton per year (TPY) greater than 25 tpy carbon monoxide (CO) permitting requirements from the minor modification portions of the rule. The subsequent dropping of the 100 tpy threshold to 25 tpy to qualify as a significant modification

appears to create an inconsistency with 326 IAC 2-5.1-3(a)(1) where it states that a permit is only required for the construction of an emission unit when the emissions of CO exceed 100 tpy. (IEA) (AEP)

Response: The thresholds for pollutants that are contained in 326 IAC 2-5.1-3 refer to permitting of an entirely new source. Existing sources that are at the registration level use 326 IAC 2-5.5-6 for construction modification pollutant thresholds and existing sources that have a minor source operating permit (MSOP) use the construction modification pollutant thresholds listed in 326 IAC 2-6.1-6. IDEM is aware that, in the future, changes may need to be made to these rule provisions in order for them to be approved into the SIP. U.S. EPA considers the current CO threshold in 326 IAC 2-7-10.5(e)(3) and 326 IAC 2-8-11(d) to be a relaxation of the current approved SIP as it was published in the Federal Register (FR) on July 21, 1997 (62 FR 38919). The current SIP requires public notice for construction modifications with allowable emissions of 25 tpy of any regulated pollutant.

Comment: Past experience has shown that CO changes below the PSD significance level have a very minor ambient impact that should allow processing of the changes as minor permit modifications. The commenter is willing to work with IDEM to identify objective criteria that could be used to identify those rare cases where a stationary source would have a significant ambient impact from CO at levels below the PSD significance level. Should IDEM choose to proceed with these changes, IDEM must justify the reasons for these changes. (IEA) (AEP)

Comment: States are given the opportunity to provide a demonstration in a SIP revision submittal to justify the change to its rules. IDEM could make a demonstration in lieu of changing the Title V minor and significant source modification thresholds for CO. Since 326 IAC 2-7-10.5 does not change any emission limitations and permit approval is still required for modifications involving CO emissions equal to or greater than 25 tpy, the only difference between 326 IAC 2-7-10.5 and prior rule 326 IAC 2-1-1 (or the proposed rule) is that the public notice of minor source modifications is not required. Thus, it does not appear that this change would interfere with an applicable requirement concerning attainment and reasonable further process toward attainment with the ambient air quality standards, or any other applicable requirement of the Clean Air Act. (BGD)

Response: IDEM realizes that the only difference between the rules is the public notice requirement, but the lack of public notice of CO source modifications from 25 to 100 tpy is an approvability issue for this rule with U.S. EPA. IDEM has discussed this issue with U.S. EPA and because the requirement is in the current SIP, it is what U.S. EPA compares to when evaluating backsliding issues.

Comment: IDEM should remove 326 IAC 2-7-10.5(g)(7) from the rule language and incorporate the new threshold for CO into 326 IAC 2-7-10.5(g)(4) so that CO is listed with the other pollutants that have a 25 tpy threshold instead of being listed separately in 326 IAC 2-7-10.5(g)(7). (BGD)

Comment: IDEM should remove 326 IAC 2-8-11.1(f)(1)(H) from the rule language and incorporate the new threshold for CO into 326 IAC 2-8-11.1(f)(1)(E) so that CO is listed with the other pollutants that have a 25 tpy threshold instead of being listed separately in 326 IAC 2-8-11.1(f)(1)(H). (BGD)

Response: IDEM has amended the draft rule language as suggested.